

Senate File 516

S-3114

1 Amend Senate File 516 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. 95.1 Definitions.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Agency*" means an agency, department, board, or
8 commission of this state or a political subdivision that issues
9 a license for purposes of operating a business in this state.

10 2. "*Department*" means the department of workforce
11 development.

12 3. "*Economic development incentive*" means a grant, loan,
13 or performance-based incentive awarded by a government entity
14 of this state. "*Economic development incentive*" includes a
15 tax credit or tax incentive program if the tax credit or tax
16 incentive program requires an application to a government
17 entity by an employer on or after July 1, 2019.

18 4. "*Employ*" means hiring or continuing to employ an
19 individual to perform services.

20 5. "*Employee*" means an individual who is paid wages by an
21 employer for service in employment in this state. "*Employee*"
22 does not include an independent contractor.

23 6. "*Employer*" means an employer, as defined in section
24 96.19, that has a license issued by an agency in this state.

25 7. "*Employment*" means the same as defined in section 96.19.

26 8. "*E-verify program*" means the employment verification
27 program as jointly administered by the United States department
28 of homeland security and the United States social security
29 administration.

30 9. "*Government entity*" means this state or a political
31 subdivision of this state that receives and uses tax revenues.

32 10. "*Independent contractor*" means the same as described in
33 rules adopted by the department for purposes of administration
34 of chapter 96.

35 11. "*Knowingly employ an unauthorized alien*" means the

1 actions described in 8 U.S.C. §1324a, and shall be interpreted
2 consistently with 8 U.S.C. §1324a and any applicable federal
3 regulations.

4 12. "*License*" means a permit, certificate, approval,
5 registration, charter, or similar form of authorization, other
6 than a professional license, that is required by law and that
7 is issued by an agency, allowing the licensee to do business
8 in this state.

9 13. "*Unauthorized alien*" means an alien who does not have
10 the legal right or authorization under federal law to work in
11 the United States as described in 8 U.S.C. §1324a(h)(3).

12 14. "*Wages*" means the same as defined in section 96.19.

13 Sec. 2. NEW SECTION. 95.2 **Knowingly employing unauthorized**
14 **aliens.**

15 1. *Knowingly employing unauthorized aliens prohibited.* An
16 employer shall not knowingly employ an unauthorized alien. If
17 an employer uses a contract, subcontract, or other independent
18 contractor, the employer shall not contract with a person
19 the employer knows to be an unauthorized alien or with a
20 contractor, subcontractor, or independent contractor who the
21 employer knows is employing an unauthorized alien.

22 2. *Complaints — department action.* A county attorney,
23 local law enforcement official, or member of the public
24 may file a complaint of a violation of subsection 1 with
25 the department. If the department finds, based on evidence
26 included with the complaint or on evidence gathered by the
27 department, that an employer has violated subsection 1, the
28 department shall provide the employer with written notice
29 of the department's finding and the penalties ordered to be
30 imposed pursuant to this chapter. Upon service of such notice,
31 the department's order shall be treated as a contested case
32 under chapter 17A.

33 3. *Department order — first violation.* On a finding of a
34 first violation as described in subsection 6, the department
35 shall order all of the following:

1 a. The employer shall terminate the employment of all
2 unauthorized aliens. The employer shall be required to file
3 a signed sworn affidavit with the department within three
4 business days after the order is issued. The affidavit shall
5 state that the employer has terminated the employment of all
6 unauthorized aliens in this state and that the employer will
7 not knowingly employ an unauthorized alien in this state.

8 b. (1) The employer shall be subject to a three-year
9 probationary period.

10 (2) During the probationary period, the employer shall file
11 quarterly reports on the form prescribed in section 252G.3
12 with the department for each new employee who is hired by the
13 employer.

14 (3) The employer shall pay the department an annual
15 workforce licensing fee in the amount of five thousand dollars
16 for the probationary period.

17 c. The employer shall repay all moneys received as an
18 economic development incentive during the two years prior
19 to the violation to the government entity that awarded the
20 economic development incentive within thirty days.

21 4. *Department order — second violation.* On a finding of a
22 second violation as described in subsection 6, the department
23 shall order all of the following:

24 a. The employer shall terminate the employment of all
25 unauthorized aliens. The employer shall be required to file
26 a signed sworn affidavit with the department within three
27 business days after the order is issued. The affidavit shall
28 state that the employer has terminated the employment of all
29 unauthorized aliens in this state and that the employer will
30 not knowingly employ an unauthorized alien in this state.

31 b. (1) The employer shall be subject to an additional
32 six-year probationary period.

33 (2) During the probationary period, the employer shall file
34 quarterly reports on the form prescribed in section 252G.3
35 with the department for each new employee who is hired by the

1 employer.

2 (3) The employer shall pay the department an annual
3 workforce licensing fee in the amount of five thousand dollars
4 for the probationary period.

5 c. The employer shall repay all moneys received as an
6 economic development incentive during the two years prior
7 to the violation to the government entity that awarded the
8 economic development incentive within thirty days.

9 5. *Department order — third violation.* On a finding of a
10 third violation as described in subsection 6, the department
11 shall order all of the following:

12 a. The appropriate agencies shall permanently revoke all
13 licenses that are held by the employer. On receipt of the
14 order, the appropriate agencies shall revoke the licenses
15 according to the department's order within three business days.

16 b. The employer shall repay all moneys received as an
17 economic development incentive during the two years prior
18 to the violation to the government entity that awarded the
19 economic development incentive within thirty days.

20 6. *Violations defined.*

21 a. A violation shall be considered a first violation by an
22 employer if the violation did not occur during a probationary
23 period ordered by the department under subsection 3, paragraph
24 "b", or subsection 4, paragraph "b".

25 b. A violation shall be considered a second violation by an
26 employer if the violation occurred during a probationary period
27 ordered by the court under subsection 3, paragraph "b".

28 c. A violation shall be considered a third violation by an
29 employer if the violation occurred during a probationary period
30 ordered by the court under subsection 4, paragraph "b".

31 7. *Department report to immigration and customs*
32 *enforcement.* Upon exhaustion of an employer's right of
33 administrative and judicial appeal of a final order by the
34 department pursuant to this chapter, the department shall
35 report the name and contact information of the employer and the

1 department's findings to United States immigration and customs
2 enforcement.

3 8. *Federal determination creates rebuttable presumption.* In
4 determining whether an employee is an unauthorized alien,
5 the department shall consider the federal government's
6 determination of the immigration status of the employee
7 pursuant to 8 U.S.C. §1373(c). The department may take
8 notice of the federal government's determination. The federal
9 government's determination that the employee is an unauthorized
10 alien creates a rebuttable presumption of the employee's
11 unauthorized status. The employer may present evidence that
12 the employee is not an unauthorized alien.

13 9. *Good-faith compliance.* For the purposes of this section,
14 an employer that establishes that it has complied in good
15 faith with the requirements of 8 U.S.C. §1324a(b) establishes
16 a conclusive affirmative defense that the employer did not
17 knowingly employ an unauthorized alien. An employer is
18 considered to have complied with the requirements of 8 U.S.C.
19 §1324a(b), notwithstanding an isolated, sporadic, or accidental
20 technical or procedural failure to meet the requirements, if
21 there is a good-faith attempt to comply with the requirements.
22 For purposes of this subsection, "*good-faith attempt to comply*"
23 means an employer to which all of the following apply with
24 respect to an employee hired or rehired by the employer:

25 a. The employer made a bona fide attempt to meet the
26 requirements for completion of the form I-9 for the employee
27 found in 8 C.F.R. §274a.2(a)(3), as amended through January 1,
28 2019.

29 b. The employer was a participating employer in the e-verify
30 program at the time the employee was hired or rehired.

31 c. The employer can demonstrate that the employer attempted
32 to verify the employment eligibility of the employee through
33 the e-verify program.

34 10. *Entrapment as affirmative defense.*

35 a. It is an affirmative defense to a violation of subsection

1 1 that the employer was entrapped. To claim entrapment, the
2 employer must admit by the employer's testimony or other
3 evidence the substantial elements of the violation. An
4 employer who asserts an entrapment defense has the burden
5 of proving all of the following by a preponderance of the
6 evidence:

7 (1) The idea of committing the violation started with law
8 enforcement officers or their agents rather than with the
9 employer.

10 (2) The law enforcement officers or their agents urged and
11 induced the employer to commit the violation.

12 b. An employer does not establish entrapment if the employer
13 was predisposed to violate subsection 1 and the law enforcement
14 officers or their agents merely provided the employer with
15 an opportunity to commit the violation. The conduct of law
16 enforcement officers and their agents may be considered in
17 determining if an employer has proven entrapment.

18 Sec. 3. NEW SECTION. 95.3 E-verify program — employer
19 participation — economic development incentives from government
20 entities — appropriation.

21 1. An employer who employs four or more employees in the
22 state shall, after hiring or rehiring an employee, verify the
23 employment eligibility of the employee through the e-verify
24 program, certify to the department that the employer has done
25 so, and keep a record of the verification for the duration of
26 the employee's employment or at least three years, whichever
27 is longer. The certification shall be considered a record
28 under section 96.11, subsection 6, and rules adopted pursuant
29 thereto, and shall be submitted to the department within the
30 time period required by rule for an employer to submit the
31 employer's contribution and payroll report.

32 2. For economic development incentives applied for on
33 or after July 1, 2019, in addition to any other requirement
34 for an employer to receive an economic development incentive
35 from a government entity, an employer shall register with and

1 participate in the e-verify program. Before receiving the
2 economic development incentive, the employer shall provide
3 proof to the government entity that the employer is registered
4 with and is participating in the e-verify program. If the
5 government entity determines that the employer is not complying
6 with this subsection, the government entity shall notify
7 the employer by certified mail of the government entity's
8 determination of noncompliance and the employer's right
9 to appeal the determination. On a final determination of
10 noncompliance, the employer shall repay all moneys received
11 as an economic development incentive to the government entity
12 within thirty days of the final determination.

13 3. If an employer who employs four or more employees in
14 the state verifies the employment eligibility of an employee
15 through the e-verify program, and the program indicates that
16 the employee is not eligible for employment, the employer
17 shall notify the employee and the department in writing.
18 The employee shall have the right to submit evidence to the
19 employer and department that the employee is eligible for
20 employment. If the department determines after examination
21 of such evidence that the employee was inaccurately indicated
22 as ineligible for employment by the e-verify program, the
23 department shall provide the employee with back pay in an
24 amount equal to the wages the employee would have earned from
25 employment by the employer from the date of the inaccurate
26 indication through the date of the department's determination.
27 The employee may request a contested case hearing pursuant to
28 chapter 17A following the department's determination. There is
29 appropriated to the department from funds in the general fund
30 not otherwise appropriated an amount necessary to provide any
31 back pay to employees required pursuant to this subsection.

32 Sec. 4. NEW SECTION. 95.4 Compliance with federal and state
33 law.

34 This chapter shall not be construed to require an employer to
35 take any action that the employer believes in good faith would

1 violate federal or state law.

2 Sec. 5. NEW SECTION. **95.5 Rules.**

3 The department shall adopt rules pursuant to chapter 17A to
4 administer this chapter.

5 Sec. 6. NEW SECTION. **95.6 Use of federal funds by**
6 **department prohibited.**

7 The department shall not utilize federal funds, or personnel
8 or any other department resources for which federal funding
9 is allocated, to carry out the department's duties under this
10 chapter.

11 Sec. 7. IMPLEMENTATION OF ACT. Section 25B.2, subsection 3,
12 shall not apply to this Act.>

13 2. Title page, line 1, after <aliens> by inserting <, making
14 an appropriation,>

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